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No. _____

In the Supreme Court of the United States

October Term, 1982

DENNIS L. O'CONNOR PETITIONER

vs.

THE STATE OF NEVADA, et al., RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the decision below conflicts with the Court's decision in *County of Lincoln v. Luning*, 133 U.S. 529 (1890) regarding Eleventh Amendment immunity of the State Bar of Nevada.

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STATUTES INVOLVED

Nevada Supreme Court Rule (NSCR) 39 and 76 are set forth at Pet. App. 1a.

STATEMENT

The Nevada Supreme Court has inherent authority to regulate and discipline attorneys in the state of Nevada. Pursuant to these rules, the court organized the State Bar of Nevada to act as an administrative agency of the court to report and investigate violations of the rules of attorney conduct promulgated by the court.

The Petitioner filed a grievance complaint against an attorney licensed to practice law in Nevada with the State Bar of Nevada. The case was subsequently investigated and screened by the Disciplinary Committee. The Committee dismissed the grievance.

Petitioner then filed suit, naming the State Bar as a party, alleging the State Bar had somehow conspired to violate his civil rights, and sought damages and injunctive relief.

The U.S. District Court, District of Nevada, granted Respondent's Motion to Dismiss on the basis that the State Bar as an administrative arm of the Nevada Supreme Court is not a "person" under the Civil Rights Act 1983 et seq. The Court of Appeals for the Ninth Circuit upheld that dismissal on the basis that the State Bar of Nevada was immune from suit pursuant to the Eleventh Amendment.

ARGUMENT

The decision of the Court of Appeals is correct and does not conflict with any decision of this court or any other Court of Appeals. Further review is therefore unwarranted.

The Nevada Supreme Court has inherent and exclusive authority to regulate and discipline attorneys in the State of Nevada. Nevada Supreme Court Rule (NSCR) 39. Acting within its authority, the court has promulgated rules of conduct for attorneys in Nevada, and the court has organized the State Bar of Nevada to act as an administrative agency of the court to report and investigate violations of these rules. In establishing the existence and duties of the State Bar of Nevada, the Supreme Court has retained exclusive jurisdiction and control of the State Bar. NSCR 76. In disciplinary proceedings, the Bar Association acts in a quasi-judicial capacity and as an arm of the State Supreme Court, with respect to which it is not a "person" but is an administrative agency of the court and is entitled to immunity under the Eleventh Amendment.

Petitioner argues that the State Bar is not a state agency as it does not receive any state funding. In making such argument Petitioner has ignored the myriad of cases which have held that a State Bar acting in attorney disciplinary matters does so as an administrative arm of the State Supreme Court and is not a person subject to suit under the Civil Rights Act. *Clark v. Washington,* 366 F.2d 678 (9th Cir. 1966); *Coopersmith v. Supreme Court, Colorado,* 465 F.2d 993 (10th Cir. 1972); *Silverton v. Department of Treasury,* 449 F.Supp. 1004 (C.D. Cal. 1978); *Ginter v. State Bar of Nevada,* 625 F.2d 829 (9th Cir. 1980) (per curiam).

The Petitioner also lacks standing to seek proscriptive relief in this action. Petitioner seeks a mandate to have the State Bar investigate his grievance complaint. However, the Federal Constitution does not guarantee to an individual the right to require the State Bar to process his requests for an investigation of an attorney. *Saier v. State Bar of Michigan,* 293 F.2d 756 (6th Cir. 1961). The court in that case stated of the complainant that:

... The ultimate that he might expect from this (the investigation of the complaint) would be the disbarment of the accused lawyers. This might give him a certain amount of personal satisfaction but no material gain would result to him as a consequence of such action. It would not give him any judgment against the lawyers of whose misconduct he complains and whose actions caused him financial loss. Therefore he has not been deprived of "life, liberty, or property***..."

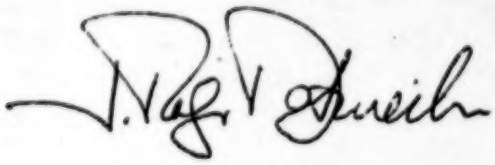
Not only has he not suffered, according to the allegations of his complaint, any deprivation of a right under the Federal Constitution as a matter of fact, but legally no such right as he claims is guaranteed to him by the Federal Constitution at 759.

As in *Saier,* supra, the Petitioner lacks a legal right to require the State Bar to conduct an investigation. The Petitioner has, therefore, failed to state a claim upon which to obtain injunctive relief. Additionally, the State Bar is not a "person" subject to suit for damages under the Civil Rights Act 1983 et seq.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.



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